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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/695,200

10/28/2003

Mark E. Zachman

SPC 0378 1A/40719.773

4518

7590

08/25/2005

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EXAMINER

ADDIE, RAYMOND W

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 08/25/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/695,200	Applicant(s) ZACHMAN ET AL.	
	Examiner Raymond W. Addie	Art Unit 3671	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 25 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 25 July 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because see continuation sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
 13. ☐ Other: _____.

Raymond Addie 8/23/05

Continuation sheet of Advisory Action
In response to Applicant's request for
Reconsideration

Applicant argues against the objection to claim 2 by stating "the desired grade cannot include measuring the grade of the soil at the construction site, receiving the concrete being level. In fact in some circumstances a the desired grade is the grade of soil at the construction site receiving the concrete being level. Again, the Examiner is reminded That while it is appropriate to use the specification to determine what the applicants intend a term to mean, a positive limitation from the specification cannot be read into a claim that does not impose that limitation. See, e.g. In re Morris, 127 F.3d 1048, 1054-55: 44 USPQ 2d 1023. 1027-28 (Fed. Cir. 1997)".

However, the Examiner does not concur.

Claim 2 positively recites "measuring a desired grade with the gravity-based cross slope sensor, and storing the desired grade in memory of the control system".

The claim does not define what grade is to be measured, hence Appellant's Specification must be referenced in order to determine how the method step of "measuring a desired grade with the gravity based cross slope sensor" is to be performed. The specification only provides for measuring the cross slope of the cross slope sensor, see page 3, Ins. 10-20.

The fact Appellant suggests, in arguments, that "if the scree(n) head is benched to the soil at the construction site...and the operator wishes for that grade of the soil to be the desired grade than the cross-slope of the gravity based sensor is stored in memory...if...a benching tool is being use(d) and the operator wishes for the grade of the bending tool to be the 'desired grade' than the screed head is benched to the tool and the cross-slope of the gravity based sensor is stored".

However, nothing in the claims permits nor requires the scenarios argued by Appellant. The specification does not even provide for a "benching tool"; nor suggest using a cross slope sensor mounted on a screed head to measure any surface relative to said screed head.

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Therefore, the Objection to claim 2 appears to be proper and is maintained.

Applicant then argues "Hohmann, Jr. teaches the use of only elevation detectors to control the position of the ends of the tool...Hohmann, Jr. fails to disclose...either the use of 'a pair of laser receivers and a gravity-base)d) gross slope sensor' or 'using the gravity-based...sensor when one of the laser receivers loses reception of the elevational reference to provide a relative measurement of the interrupted laser receiver...Hohmann, Jr. does not teach 'a sensor for sensing the slope of a screed head

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or a control circuit 'controlling the hydraulically movable ends...using the third signal from the sensor and one of the first and signal (signals) from the elevation receiver".

Applicant supports the arguments by suggesting:

"When Clegg is read fully, the passage cited by the Examiner for providing the motivation to modify the cited references as suggested, discloses using two or three types of signal generating devices for the purpose of determining distance, location, elevation and or heading of the earth mover... Using this general statement out of context to provide the motivation of combining a number of sensing devices to control a leveling implement... does not satisfy the requirement considering the prior art reference in its entirety... Clegg is silent on using a gravity base(d) sensor or any alternative sensor to control the height of the ends of the blade upon losing reception by one of the laser receivers".

However, the Examiner does not concur.

Clegg's disclosure in col. 8 clearly teaches the desirability of combining several different types of sensors into a single control circuit in order to control movement of the implement, specifically taking advantage of each sensors flexibility and technology, to include the use of lasers, ultrasonic and infrared measuring devices.

Therefore, the arguments are not persuasive and the rejection is maintained.